HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 2016 OF 2005
with
CIVIL APPLICATION NO. 1929 OF 2005.

The Municipal Commissioner of
Greater Mumbai. & Anr. ..Appellants
Versus.

Prafulla Baban Kulkarni & Ors. ..Respondents.

Shri. N. V. Walawalkar with Smt. V. K. Khatu for the Applicants / Appellants

Shri. P. N. Karlekar for the respondents.

CORAM: DR.D.Y. CHANDRACHUD J.

DATE : DECEMBER 1, 2005.

P.C.

1. Admit. By consent taken up for hearing and final disposal.

2. This First Appeal is directed against an order of the Additional Chief Judge of the Small Causes Court at Bombay in a Municipal Appeal filed under section 217 of the Mumbai Municipal Corporation Act, 1888.

3. The dispute in the present case relates to the assessment of property bearing Municipal Ward No. T-746(14), situated at CTS No. 722, Navghar Road, Mulund

(East) Mumbai 81. The rateable value of the open land in question admeasuring 711.20 sq. mtrs. came to be assessed at Rs.1,28,655/- with effect from 1.4.1996 by a Special Notice dated 27.3.1997. The respondents lodged a complaint against the determination of the rateable value on 31.3.1997, which was disposed of by the Investigating Officer on 17.10.1997. The Investigating Officer modified the rateable value to Rs. 99,850/- with effect from 1.4.1996. The respondents filed an appeal challenging the order of the Investigating Officer. One of the submissions before the Chief Judge of the Small Causes Court in the Municipal Appeal was that the order of the Investigating Officer was not a reasoned order. While allowing the appeal, the Additional Chief Judge set aside the rateable value fixed at Rs.99,850/-. The Appellate authority has noted that: (i) The plot in question was undeveloped, although the building plans had been sanctioned in the year 1996; (ii) The respondents had given a notice of vacancy benefit and that accordingly a refund order was passed in favour of the respondents; and, (iii) Though the Municipal Corporation had sanctioned building plans in the year 1996 and the commencement certificate had been issued, that was cancelled on 14.2.2000.

The Investigating Officer had adopted a Rs.1300/- sq.

mtrs. which was held not to be justified. The Additional Chief Judge of the Small Causes Court held that there was no construction on the land in the year 2000, and that since the land was undeveloped, there was no reason for the fixation of rateable value.

4. On behalf of the appellant, it has been submitted that the order of the appellate authority suffers from a fundamental error in that it confuses the issue of the grant of a vacancy benefit with the primary determination of rateable value. It was urged that undoubtedly the land was vacant at the material time, the commencement certificate had been cancelled and that an order of refund had been passed in favour of the respondent on the basis that the land was vacant. However, it was submitted that this cannot be a ground for not determining the rateable value. Moreover, inasmuch as the order of the Investigating Officer was assailed on the ground that it was not a reasoned order, it would have been proper to remand the proceeding back to the Investigating Officer.

5. On behalf of the respondents, it has been submitted that the respondents had paid an amount of Rs.2,46,014/- for the period 1.4.1996 to 30.9.1996. It was urged that the respondents are in fact entitled to

refund of Rs.1,52,269/- after receiving a benefit on account of vacancy in the sum of Rs.93,745/-.

6. The order passed by the Investigating Officer, it is common ground, is not a reasoned order. The determination of rateable value cannot be equated with the grant of a vacancy benefit. A concession in taxes may be provided for by the legislature in its wisdom on the basis that the property is vacant and it is on that ground that the vacancy benefit was allowed in the present case. That, however cannot preclude the Municipal Corporation from determining the rateable value in accordance with law. Whether or not the owner is liable to pay taxes or receive a vacancy benefit is a separate matter altogether. In the circumstances, to my mind it would be appropriate to remand the proceedings back to the Investigating Officer. There is justification in the grievance of the respondents that the order of the Investigating Officer suffers from an infirmity in the sense that no reasons were recorded in support of the order. In order to facilitate a fresh determination of the rateable value in accordance with the law, the order of the Additional Chief Judge of the Small Causes Court impugned in this appeal is quashed and set aside. The Proceedings shall be remitted back to the Investigating Officer. The respondent shall appear

before the Investigating Officer on 12.12.2005 so that the Investigating Officer can give directions to decide the Special Notice dated 27.3.1997 with reference to the suit plot of land, which was the subject matter of the municipal appeal. All the rights and contentions of the parties are kept open. The Investigating Officer shall furnish to the respondents an opportunity of being heard and pass a reasoned order in accordance with law. The respondents shall be at liberty to point out to the Investigating Officer the amounts which have been paid by them and the Investigating Officer shall determine, if the respondents are entitled to any refund on account of excess payment. The First Appeal is accordingly disposed of.

. In view of the disposal of the First Appeal, Civil Application No. 1929 of 2005 is rendered infructuous and is accordingly disposed of.

(DR. D.Y. CHANDRACHUD J.)